



DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818]

Certain Pasta from Italy: Notice of Court Decision Not in Harmony with the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 4, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Ghigi 1870 S.p.A. v. United States*, Consol. Court no. 20-00023, sustaining the Department of Commerce (Commerce)'s remand results pertaining to the administrative review of the antidumping duty (AD) order on certain pasta (pasta) from Italy covering the period July 1, 2017, through June 30, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results and amended final results of the administrative review, and that Commerce is amending the final results and amended final results with respect to the weighted-average dumping margin assigned to Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (the collapsed, single entity Ghigi/Zara), Agritalia S.r.l. (Agritalia), and Tesa S.r.l. (Tesa).

DATES: Applicable May 14, 2022.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1468.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 2020, Commerce published its *Final Results* in the 2017-2018 AD administrative review of pasta from Italy.¹ Commerce calculated weighted-average dumping margins of 91.76 percent and 0.50 percent for the mandatory respondents Ghigi/Zara and Industrie Alimentare Colavita S.p.A. (Indalco), respectively. Commerce assigned an average of the weighted-average dumping margins calculated for Ghigi/Zara and Indalco (*i.e.*, 44.56 percent) to the two non-examined companies Agritalia and Tesa.²

After correcting a ministerial error contained in the *Final Results*, on March 3, 2020, Commerce published the *Amended Final Results*, and revised the weighted-average dumping margin for Indalco from 0.50 percent to 0.00 percent. Consequently, Commerce revised the review-specific rate applied to the two non-examined companies of to 91.76 percent, the rate from the *Final Results* for Ghigi/Zara.³

Ghigi/Zara, Agritalia, and Tesa appealed Commerce's *Final Results*. On November 30, 2021, the CIT remanded the *Final Results* to Commerce, holding that Commerce's use of adverse facts available with respect to Ghigi's U.S. payment dates was unlawful and unsupported by substantial evidence.⁴

In its final results of redetermination, issued in February 2022, Commerce provided further explanation of why adverse inferences are warranted when selecting from among the facts otherwise available, and thus, continued to use adverse facts available with respect to Ghigi's U.S. payment dates.⁵

Further, when applying adverse facts available to Ghigi's U.S. payment dates, Commerce found an error where it had applied adverse facts available to certain U.S. sales where the

¹ See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 2714 (January 16, 2020) (*Final Results*).

² See Memorandum, "Certain Pasta from Italy: Margin for Respondents Not Selected for Individual Examination," dated January 10, 2020.

³ See *Certain Pasta from Italy: Amended Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 12518 (March 3, 2020) (*Amended Final Results*).

⁴ See *Ghigi 1870 S.p.A. v. United States*, 547 F. Supp. 3d 1332 (CIT 2021).

⁵ See *Final Results of Redetermination Pursuant to Court Remand: Ghigi 1870 S.P.A. and Pasta Zara S.P.A., et al v. United States*, Court No. 20-00023, Slip Op. 21-159 (February 25, 2022).

payment date was on the record of the administrative review. Accordingly, Commerce corrected this erroneous application of adverse facts available to those U.S. sales for the final results of redetermination.⁶

The CIT sustained Commerce’s final redetermination.⁷

Timken Notice

In its decision in *Timken*,⁸ as clarified by *Diamond Sawblades*,⁹ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s May 4, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Results* and *Amended Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* and *Amended Final Results*¹⁰ with respect to Ghigi/Zara, Agritalia, and Tesa as follows:

Exporter or Producer	Weighted-Average Dumping Margin (percent)
Ghigi 1870 S.p.A. and Pasta Zara S.p.A.	91.74
Agritalia S.r.l.	91.74
Tesa S.r.l.	91.74

Cash Deposit Requirements

Because Ghigi/Zara, Agritalia, and Tesa have superseding cash deposit rates, *i.e.*, there

⁶ *Id.* at 8.

⁷ See *Ghigi 1870 S.p.A. v. United States*, Consol. Court No. 20-00023, Slip Op. 22-41 (CIT May 4, 2022).

⁸ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁹ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹⁰ The current weighted-average dumping margins for Agritalia and Tesa were determined in the *Amended Final Results*.

have been final results published in subsequent administrative reviews, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were produced and/or exported by Ghigi/Zara, Agritalia, or Tesa, and were entered, or withdrawn from warehouse, for consumption during the period July 1, 2017, through June 30, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by Ghigi/Zara, Agritalia, or Tesa in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an import-specific *ad valorem* assessment rate is zero or *de minimis*,¹¹ we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: June 2, 2022.

Lisa W. Wang,
Assistant Secretary

for Enforcement and Compliance.

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¹¹ See 19 CFR 351.106(c)(2).